IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2815 OF 2003 WITH

CHAMBER SUMMONS NO.19 OF 2005

Mukand Kamgar Union & anr. ..Petitioners.

Vs.

Mukand Limited ..Respondent.

....

Mr. Susheel Mahadeshwar with Ms. Ranjana Todankar for the Petitioners.

Mr. C.U. Singh with Mr. K.P. Krishna Nair i/b Mr.Sanjay Udeshi for Respondent No.1.

Mr. Umesh Shetty for the Intervenor in Notice of Motion 646 of 2004.

Mr. Jaiprakash Sawant for the Applicants in Chamber Summons No.19 of 2005.

WITH

WRIT PETITION NO.2398 OF 2004

Mukand Limited ..Petitioner.

Vs.

Mukand Kamgar Union & anr. ..Respondents.

....

Mr. C.U. Singh with Mr. K.P. Krishna Nair i/b Mr. Sanjay Udeshi for the Petitioner.

Mr. Susheel Mahadeshwar with Ms. Ranjana Todankar for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

2nd February, 2005.

P.C. :

1. The unions representing both the categories of staff and the workmen in Mukand Limited had filed proceedings in this Court under Article 226 to challenge the permission that was granted by the Commissioner of Labour for closure under Section 25-O of the Industrial Disputes Act, 1947. When the Petitions were heard, an attempt was made by the counsel appearing on behalf of the unions as well as the employer to resolve the dispute amicably. Consent Terms were eventually filed before this Court and in terms thereof the following order was passed on 1st July, 2004.

> 'The issue in these two petitions has been settled after discussion between the parties and their advocates. The Consent Terms have been taken on record and are marked as 'X'. The Consent Terms, however, envisaged

> that the Petitions be kept pending for the sole purpose of enabling the Petitioners to realize the payments which are to be made under the Consent Terms. Since the last of the payments is due to be made on or before 31st January, 2005, these Petitions be listed under the Settlement caption so that final orders can be passed disposing of the Petitions.
>
> The Consent Terms are accepted so as to enable the parties to act in pursuance thereof.
>
> Place on 1st February, 2005."

2. In pursuance of the Consent Terms an amount of Rs.11.40 Crores has been disbursed by the employer of which an amount of Rs.11.20 Crores has been deposited before the Prothonotary and Senior Master. The disbursement of the amount to the workmen is to take place in terms of the further order dated 15th July, 2004. The Consent Terms, as the order of this Court dated 1st July, 2004 would reflect, envisaged that the Petition should be kept pending in this Court for the sole purpose of enabling the Petitioners to realise the payments which were to be made under the Consent Terms. The last of the payments was due to be made on or before 31st January, 2005. At that stage, counsel appearing on behalf of the unions had submitted that in order to enable the Court to ensure that

the payments as agreed upon in the Consent Terms are in fact duly made by the employer, it would be appropriate that the Petitions are not finally disposed of at that stage. The Consent Terms were, however, accepted and placed on the record. These Petitions have been placed for directions in pursuance of the order dated 1st July, 2004.

3. Mr. Mahadeshwar, counsel appearing on behalf of the Petitioner unions, states on the instructions of Mr. Anant More, General Secretary of Mukand Kamgar Union (Petitioner No.1) that all the payments which were required to be made under the Consent Terms have in fact been made by the employer. A similar statement is made on instructions by Mr.C.U.Singh appearing on behalf of the employer. In that view of the matter, there is no reason why these Petitions should be kept pending before the Court any further and the prayer which is made jointly on behalf of the Petitioners and by the counsel appearing on behalf of the Respondent employer for the disposal of the Petitions in terms of the Consent Terms should, in my view, be acceded to.

4. The record of the case will show that on 10th December, 2004 an application for intervention was made by an erstwhile employee. His grievance was that under the Consent Terms it had been provided that those workmen who had not accepted the closure compensation would be granted the benefit of the Consent Terms. In so far as the Applicant is concerned, his contention was that the closure compensation was accepted by him under protest and that he should be allowed to intervene in the Petition. When the application was moved before Mr. Justice F.I. Rebello, the learned Judge was of the view that the main relief that has been sought by the unions has already been dealt with in terms of the Consent Terms and that the Petitions have now been kept alive only for the limited purpose of ensuring the distribution of the amount in terms of the Consent Terms. At the highest, the Applicant could have intervened if he was able to show that the Consent Terms have been obtained by practising fraud on the Court or such other act that would render the Consent Terms null and void. The Learned Judge noted that there was no such allegation. The contention of the Applicant was that he was entitled to the benefit of the Consent

Terms like other workmen. However, since the union of which he was a member had not supported the case of the Applicant on the ground that he had not duly accepted the closure compensation, no relief could be granted to him in these proceedings. At the highest, if he is aggrieved, it would be open for him to adopt necessary proceedings in accordance with law.

5. Again when the matter is placed on Board today, a similar request is made on behalf of the Applicant. Another application for intervention has been made on behalf of 5 retired employees who contend that the withdrawal of certain pending proceedings by the union in pursuance of the Consent Terms would operate to the detriment of a group of employees. In the affidavit it has been stated that these pending proceedings would have been likely to be decided in favour of the workmen including the Applicant. In a matter such as the present, the Court must be guided by the circumstance that the dispute has been settled in terms whereof 282 workmen are to be paid a total amount of Rs.11.40 Crores. In pursuance to the Consent Terms, monies have been deposited in the

Court and the disbursal of the amount is to take place in terms of the stipulations which are contained in the consent order. At this stage, even assuming that the grievance of any one or more employees who have not received the benefit of the Consent Terms is genuine, it would manifestly not be in the interest of justice to entertain such a grievance in proceedings which were filed by the union, when the union has in the interests of the general body of workmen arrived at a settlement which is fair and just. All the Applicants before the Court are or have atleast at the relevant time been the members of the Petitioner union. All the proceedings which are sought to be withdrawn, it is common ground, are proceedings which were being espoused by the unions and not by any individual workman. In such an event, it is open to a union having regard to the overall interest of the body of the workmen and in the interests of industrial peace and harmony, to arrive at a fair and bonafide settlement with the employer. Mr. Justice F.I. Rebello in his order dated 10th December, 2004 has left it open to any individual if he is aggrieved by the non-implementation of the Consent Terms or for any other reason whatsoever to adopt

appropriate proceedings in accordance with law. Intervention in these proceedings which have been settled as between the union representing the workmen and the employer cannot be permitted particularly when the effect thereof would be to derail the entire process of disbursement which governs an overwhelmingly large body of workmen. In the circumstances, since the employer has admittedly effected the deposit as required under the Consent Terms and the process of disbursal will proceed in accordance with the contents thereof, it is not necessary to keep the Petitions pending any further. The individual applicants will be at liberty to adopt such proceedings as they seek to pursue to realise their own claims or entitlements.

6. The Petitions are disposed of in terms of the Consent Terms.

7. In view of the order passed in the main petition and for the reasons indicated therein, the Chamber Summons shall stand dismissed.